



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GERALD B ROSENBERG
NEW TECH LAW
260 SHERIDAN AVENUE
SUITE 208
PALO ALTO CA 94306-2009

COPY MAILED

NOV 29 2007

OFFICE OF PETITIONS

In re Application of :
Yves Jean Caseau :
Application No. 10/656,577 : ON PETITION
Filed: September 4, 2003 :
Attorney Docket No. WHPJ3002 :

This is a decision on the petition filed on August 2, 2007, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely pay the issue fee as required by the Notice of Allowance, mailed April 27, 2007. This Notice set a statutory period of three (3) months from the mailing date of the notice for fee

transmittal. The three-month statutory period for paying issue fees cannot be extended. No issue fee having been received, the above-identified application became abandoned on July 28, 2007. The mailing of this decision precedes the mailing of a Notice of Abandonment.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1), the required reply.

As to item (1), although petitioner did file a Request for Continued Examination (RCE) and a submission in the form of an Information Disclosure Statements (IDS), **petitioner has failed to submit the issue fee** as required by the Notice of Allowance. Payment of the issue fee is required "as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee."¹ While petitioner could have replied to the Notice of Allowance with just an RCE **before the application became abandoned**, once the application is abandoned the issue fee must accompany the RCE.

On renewed petition, petitioner must submit the issue fee. If the above-identified application is again allowed, petitioner may request that this issue fee be applied towards the issue fee required by a new Notice of Allowance.²

Further correspondence with respect to this decision should be addressed as follows:

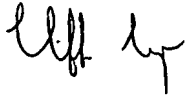
¹ MPEP 711.03(c)(II)(A)(1).

² The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply and previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

By mail: Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703)305-0272.

A handwritten signature in black ink, appearing to read "Cliff Congo", with a stylized flourish at the end.

Cliff Congo
Petitions Attorney
Office of Petitions